

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the matter of:

Telephone Number Portability

CC Docket No. 95-116

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION  
AND OF THE PEOPLE OF THE STATE OF CALIFORNIA**

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The California Public Utilities Commission and the People of the State of California (CPUC or California) submit this Response to the Petition for Declaratory Ruling (Petition) of the Cellular Telecommunications & Internet Association (CTIA), filed on January 23, 2003. While California does not oppose the relief CTIA seeks, California vehemently opposes any further extension of the deadline for implementing wireless local number portability (LNP) for reasons that are set forth below.

**I. INTRODUCTION**

In its petition, CTIA requests that the Federal Communications Commission (FCC or Commission) issue a declaratory ruling as follows:

[T]hat wireline carriers have an obligation to port their customers' telephone numbers to a CMRS provider whose service area overlaps the wireline carrier's rate center and that no agreement between the two carriers, beyond a standard service-level porting agreement, is necessary.

In a nutshell, CTIA has identified, correctly, a discrepancy between the intent of the Commission's LNP mandate and the industry's number portability guidelines. The LNP rules were developed by and for wireline carriers to enable wireline LNP. Even though the FCC originally required wireless carriers to comply with the LNP mandate concurrently with wireline carriers, that is, by December 31, 1998, the FCC subsequently granted the wireless industry numerous extensions of time to comply with the mandate. The present deadline, which the Commission set in a July 2002 order, is November 24, 2003.<sup>1</sup> As a consequence, wireless carriers have yet to meet the LNP mandate.

The FCC should not be caught in the inevitable dispute this petition will generate between wireline and wireless carriers. The Commission's mandate is clear – customers should enjoy the benefits of portability for their wireless telephone numbers. If ensuring that this benefit is realized requires an FCC determination that the industry's number portability guidelines should be changed, then the fix is simple – change the guidelines – but do not delay the benefits.

As the years of delay have ticked by, the issue of integrating wireless carriers into the wireline number portability scheme has generated considerable debate. The specific technical details of accomplishing wireless LNP integration was relegated to the North American Numbering Council (NANC), which, in typical fashion, created a working

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<sup>1</sup> *Memorandum Opinion and Order*, FCC 02-215, WT Docket No. 02-184/ CC Docket No. 95-116, Released: July 26, 2002.

group to resolve the technical issues and make recommendations to the NANC.<sup>2</sup> The NANC, in turn, would make recommendations to the FCC. As CTIA recounts at length in its petition, however, the informal NANC consensus-driven process was unsuccessful; the working group's members could not reach consensus, nor could the NANC, on how to integrate wireless carriers into the LNP scheme designed for wireline portability. The matter was referred to the FCC where it has languished.<sup>3</sup>

Which brings us to the petition at hand. CTIA would have the Commission believe that resolution of the issue identified in the petition must be resolved before November 24, 2003 or wireless LNP cannot be implemented. Indeed, CTIA asserts as much in its petition:

If wireless number portability is to go forward on the basis and timetable the Commission has ordered, a declaratory ruling is necessary to remove uncertainty about the extent of wireline local exchange companies' obligation to meet consumer requests to port number to wireless carriers. (Petition, pp. 2-3.)

Of course, the sky will not fall come November 24, 2003, even if the FCC fails to resolve this particular policy issue. Consequently, the Commission must not allow any further delay in the deployment of wireless LNP. As the FCC is well aware and articulated again in its July 2002 order, wireless LNP benefits consumers.

[W]e continue to view wireless LNP as providing important benefits to consumers. We find that by denying permanent forbearance from the wireless LNP requirements, we ensure that as the wireless industry

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<sup>2</sup> The NANC is a federally-chartered advisory board to the FCC. The CPUC holds one of the NARUC delegate seats on the NANC.

<sup>3</sup> CTIA reports that the NANC referred the rate center issue to the FCC in May 1998, June 1999, and November 2000. (Petition, p. 9.)

continues to mature, and wireless subscribers become significantly more invested in their phone numbers, they will be able to experience the benefits of LNP. (FCC 02-215, July 26, 2002, ¶ 18.)

## **II. THE FCC SHOULD RESOLVE THE ISSUE CTIA RAISES, BUT NOT POSTPONE THE WIRELESS LNP COMPLIANCE DEADLINE**

### **A. The Wireless Industry Has Acknowledged For Years That No Technical Impediment Exists to Wireline-to-Wireless Portability**

Since 1998, the wireless industry has argued repeatedly that no technical impediment exists to prevent wireless LNP from being implemented on schedule.<sup>4</sup> In May 1998, the Local Number Portability Administration Working Group (LLNPAWG) submitted to the NANC a Report on Wireless Wireline Integration. Appendix D to that Report addressed the “Rate Center Issue” identified in CTIA’s petition. Because the Wireless Wireline Integration Task Force (WWITF) could not reach consensus on the rate center issue, the report itself contained a description of the technical issues but no recommended solution. Appendix A to the Report contained a “Wireline Position Paper”, and a “Wireless Position Paper”. The second paragraph of the Wireless Position Paper reads as follows:

During its deliberations, the WWITF has identified a so-called “disparity” which would exist with the current architecture, making it impossible for some wireless subscribers to port to wireline carriers. No such restriction would prevent wireline subscribers from porting to a wireless carrier. This apparent “disparity” is based solely on the wireline carriers’ position that the limitation of Service Provider portability to the wireline-established rate

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<sup>4</sup> The CPUC distinguishes technical impediments from issues raised both in the 1999 CTIA petition seeking an extension of time for the LNP compliance mandate based on the need to “build-out” PCS networks, and in the 2001 Verizon Wireless petition seeking permanent FCC forbearance from the LNP mandate on the grounds that the wireless marketplace is fully competitive.

centers must remain an inviolable provision of the number portability architecture. Although there is consensus within WWITF of (sic) one mechanism – location number portability – that would ameliorate the claimed “disparity”, all parties do not agree that location portability is a prerequisite to the implementation of Service Provider portability between wireline and wireless carriers. Indeed, no technical barrier has been identified which would prevent the full integration of wireless service providers into wireline portability from continuing, on schedule, while the WWITF develops a solution that would give all telecommunications users the benefits of number portability.

The CPUC offers several observations about the passage quoted above. First, the issue which CTIA now claims demands immediate FCC resolution is identified in the cited passage as the “so-called ‘disparity’” issue, with the word disparity repeatedly set off by quotation marks. The characterization of the “disparity” issue in this manner demonstrates that the wireless industry representatives responsible for drafting the Wireless Position Paper viewed the rate center issue with some disdain, and certainly dismissed the wireline industry’s concerns. Second, in this passage the wireless industry unequivocally states that the rate center issue should “not prevent the full integration of wireless service providers into wireline portability . . . on schedule”. Finally, we note the phrase at the end of the passage linking “all telecommunications users” with “the benefits of number portability”. Needless to say, the wireless industry has abandoned its prior view that number portability affords wireless users, as a subset of “all telecommunications users”, any benefits, or at least, any benefits that would justify the costs to the industry of deploying LNP.

The wireless industry has not retreated, however, from its position that no technical impediment exists to halt implementation of wireless LNP. Indeed, the wireless

industry has asserted this position again recently, before the United States Court of Appeals for the District of Columbia Circuit, in CTIA v. FCC, a wireless industry appeal of the FCC's July 2002 decision denying permanent forbearance of the wireless LNP mandate. In their brief, joint petitioners CTIA and Verizon Wireless make the following statements about technical implementation of wireless LNP.

Moreover, uncontradicted facts in the record establish that once wireless carriers completed network upgrades required by a separate FCC mandate in November 2002, there would be no technical barrier preventing wireless carriers from offering to port in a wireline customers' number.<sup>5</sup>

Nor is there any technical barrier to wireline customers porting their numbers to wireless carriers that are seeking to attract landline customers. As discussed above, wireline carriers are already required, pursuant to Section 251(b)(2) of the [1996 Federal Telecommunications] Act, to offer LNP.<sup>6</sup>

What this all amounts to is a plain admission by the wireless industry beginning in 1998 and extending to the present that wireless LNP can be implemented, notwithstanding the FCC's failure to resolve the outstanding rate center issue. The FCC should have no hesitation on this point, as the industry segment yet to comply with the LNP mandate has conceded repeatedly that achieving the goal is both technically feasible and viable. The matter at hand, then, involves a policy dispute, not a technical obstacle.

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<sup>5</sup> Brief for Petitioners, Cellular Telecommunications & Internet Association and CellCo Partnership, d/b/a Verizon Wireless vs. Federal Communications Commission, D.C. Circuit Case No. 02-1264, filed December 23, 2002, pp. 27-28, emphasis added.

<sup>6</sup> Id at 30, emphasis added.



**B. A Conflict Resolution Process Exists For Resolving Portability Disputes Between Carriers**

The FCC need not contemplate any delay in the current wireless LNP implementation date of November 24, 2003 for another reason. Today, the industry has in place a conflict resolution process for addressing disputes between carriers pertaining to the porting of specific numbers. That process is contained in the NANC's Functional Requirements Specification (FRS) for the Number Portability Administration Center (NPAC) and the Service Management System (SMS).<sup>7</sup>

Section 2.4 of the FRS is entitled "Conflict Process", and sets forth the steps that are taken in the event of a conflict pertaining to a carrier's request to port a customer number.<sup>8</sup> This is the process that will apply in the event that a wireless carrier encounters any difficulty in porting a wireline customer's number post-implementation of wireless LNP. In the numbering sphere, the FCC has emphasized its preference for relying on industry solutions to technical problems. While the CPUC at times has been at odds with both specific industry solutions and the FCC's reliance on the industry as a problem-solver, this is an instance in which the industry appears to have anticipated the very type of difficulty CTIA's petition highlights.

Should the FCC not resolve the wireline-to-wireless porting issue by November 24, 2003, at a minimum the FCC should direct that the existing conflict resolution process contained in the FRS be employed as an interim means of resolving inter-carrier

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<sup>7</sup> The CPUC refers here to the final version of this document, dated October 3, 2002.

<sup>8</sup> Because the FRS is so large, and the CPUC presumes the FCC already has a copy, we are not attaching the document.

wireline-to-wireless porting. And if the FCC fails to provide that directive, the industry is nonetheless bound by the FRS. Again, wireless LNP need not be delayed while the rate center issue is pending.

### **III. THE ISSUE AT HAND IS A POLICY MATTER WHICH, IF NOT RESOLVED, MUST NOT DELAY WIRELESS LNP COMPLIANCE**

Given that the rate center disparity issue CTIA identifies in its petition requires a policy determination and not a technical resolution, the FCC must not defer the November 24, 2003 wireless LNP mandate deadline. The CPUC presumes that CTIA has filed this petition at this point in time not because the matter must be resolved prior to implementation of LNP, but simply to obtain a further postponement of the wireless LNP deadline. CTIA likely anticipates that wireline carriers will oppose any deviation from the existing LNP guidelines to accommodate the fact that wireless carriers networks are not deployed on the same rate center basis as wireline networks. The FCC could find itself caught between two industry segments, each with a very different view about how the “rate center disparity” issue should be resolved. The FCC must not fall for this ploy.

#### **A. The Current Porting Rules Prohibit Customers From Porting Across Rate Center Boundaries**

The issue raised by CTIA’s petition is whether a wireline customer should be allowed to port a telephone number outside the rate center associated with his/her exchange if the wireless carrier to which the customer wishes to port the number has no physical presence in the customer’s rate center. The rules developed for wireline number portability are premised on the architecture of the wireline network. Wireline NXX

codes must be associated with a rate center and the numbers derived from that NXX code cannot be assigned to customers located outside the exchange boundaries for that rate center. The location of the customer's rate center determines the customer's local calling area, and is used for rating and routing the customer's calls. For the wireline network, this fact at present is comparable to noting that water always flows downhill or the sun always rises in the east and sets in the west. It is an immutable rule of wireline network deployment. At some point, the telecommunications industry may develop and deploy some form of geographic portability that would apply to wireline numbers (and customers), but that day is not yet upon us.

This rule of wireline network architecture, however, does not apply in quite the same way to wireless carriers. While it is correct that even for wireless carriers, an NXX code must be associated with a particular rate center for rating and routing purposes, the location of the rate center has little to do with identifying the customer's location or local calling area. Wireless carriers provide "local" calling in a much larger geographic area than do wireline carriers, who are limited to the local calling area designated by their state commissions. For example, the "local" calling area for a wireless carrier providing service in California may extend from the California-Oregon border to San Luis Obispo on the Central Coast, an area perhaps five hundred miles long and two hundred miles wide. Because wireless carriers base their pricing plans on minutes of use within large geographic zones often encompassing dozens or even hundreds of wireline rate centers,

the size or precise location of the wireline rate center in which the customer is located is of very little significance for pricing purposes.

Once wireless LNP is in place, a wireline customer could port her telephone number from her home in the Redwood City exchange to Sierra Wireless, which provides service in her community. Sierra Wireless may have no numbers associated with the Redwood City rate center, but may have numbers in the San Mateo rate center, located a few miles and two exchanges north of Redwood City. The change would be transparent to the customer, who would suddenly have a larger “local” calling area offered by Sierra Wireless. But, the switch to Sierra would require the ILEC currently providing local exchange service to the customer to port the customer’s number out of the Redwood City rate center to the San Mateo rate center. While this is technically possible, it violates the wireline-based portability rules, which prohibit porting a telephone number outside of the exchange associated with the rate center to which the number is assigned because doing so implicates rating and routing conventions.

**B. The FCC Should Resolve This Policy Issue In Favor of Consumers and Competition**

In California’s view, the FCC should resolve this policy issue in favor of consumers and competition. It is true that the industry guidelines prohibit porting of numbers from one rate center to another, but that prohibition was based on the wireline network architecture. Allowing numbers to be ported only within a rate center from one carrier to another, regardless of the manner in which the receiving carrier’s network is structured, is consistent with industry rules but inconsistent with the makeup of the

telecommunications marketplace. The loser in this scenario is the consumer, who simply wants to exercise his option to seek service from a competing provider without having to give up his existing telephone number to do so.

Further, requiring rigid adherence to wireline rate center rating and routing conventions will result in inefficient number allocation. Wireless carriers would need to obtain numbers in every rate center in order to recruit customers in every rate center. Since they do not need to have those numbers to provide service there, but would be acquiring numbers purely to accommodate the wireline rate center configuration, many numbers would be unnecessarily stranded.

Competition also would suffer. A customer would be forced to choose between remaining with an ILEC and keeping her telephone number, or moving to a wireless carrier and giving up that number. For the very same reasons that California has staunchly supported implementation of wireless LNP, and continues to do so, we urge the FCC to require wireline carriers to port their customer's number to the facilities of the wireless carrier the customer chooses, even if the wireless carrier has no physical presence in the rate center serving the customer. Recognizing that an NXX code cannot be ported across an area code boundary, however, the CPUC concedes that the FCC must put a limit on the porting of wireline numbers to wireline carriers: the number cannot be ported into another NPA, even if the closest location of the wireless carrier's physical

facilities is in another NPA.<sup>9</sup> For similar reasons, California recommends disallowing the porting of wireline customer numbers across LATA boundaries, although the likelihood of an attempt to port from one LATA to another is small as most LATA boundaries are coterminous with NPA boundaries.

Adopting a clear requirement that wireline carriers must allow porting from their customer's rate center to a wireless carrier's rate center will require a change to the industry's porting guidelines. The FCC must order the NANC to establish the protocols for inter-rate center wireline-to-wireless porting. Once the policy determination is made to allow wireline-to-wireless inter-rate center porting, establishing the rules for it will be an easier task for the industry.

Finally, the CPUC is aware that, should the FCC adopt the rule we propose, the Commission would be taking the first step towards full geographic portability. Inter-rate center porting is, in essence, a form of geographic portability because it allows the movement of a number outside the exchange to which it was assigned. While it might seem preferable, from a regulatory perspective, to approach the issue of geographic portability on a larger scale, California reminds the FCC that telecommunications is an industry that routinely runs far ahead of regulation.<sup>10</sup> Waiting to resolve this discrete issue until the larger matter of geographic portability on a grand scale is addressed will

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<sup>9</sup> This is so because porting a number into another area code would create the very problem California and other states are trying to solve pertaining to grandfathered wireless codes. Having an NXX code from one NPA located in a rate center in a different NPA creates its own set of problems, including the fact that the number(s) cannot be pooled or ported again.

<sup>10</sup> The CPUC recognizes, of course, that any comprehensive discussion of geographic number portability is well beyond the scope of the instant petition.

only retard competition, hurt consumers, and impair the ability of some telecommunications service providers to fully participate in the marketplace.

#### **IV. CTIA Should Have Sought Formal FCC Action On the Rate Center Disparity Issue In an Earlier Petition**

As noted, the CPUC agrees that CTIA has raised in its petition a legitimate issue for FCC attention. At the same time, it is curious that, though CTIA characterizes resolution of the rate center disparity issue as vital to the success of wireless LNP, neither CTIA nor any wireless carrier has raised the issue in a formal filing with the FCC.<sup>11</sup> As a regular participant at the NANC, California appreciates the value of industry input on technical issues. Nonetheless, when the informal NANC process fails to produce results, carriers will bring an issue to the FCC on an individual or group basis to ensure that the FCC is put on formal notice of the need to address a particular issue.<sup>12</sup>

Simply put, if the wireless industry were as concerned about resolution of the rate center disparity issue as it has been about avoiding compliance with the wireless LNP mandate, the FCC would have seen numerous formal filings raising the rate center

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<sup>11</sup> The following are a few of CTIA's statements attesting to the critical need for immediate FCC resolution of the rate center issue: "If wireless number portability is to go forward on the basis and timetable the commission has ordered, a declaratory ruling is necessary to remove uncertainty . . .". Petition, p. 2. "The FCC must resolve this issue promptly, and well before the November 24, 2003 deadline for CMRS LNP." Petition, p. 18. "If the Commission allows the deadlock over intermodal porting to extend beyond November 24, 2003, the reality of wireline to wireless porting will be a risk . . .". Petition, p. 19.

<sup>12</sup> The CPUC distinguishes here between NANC reports, and formal pleadings filed with the FCC Docket Office. A formal pleading becomes a part of the record in a formal FCC proceeding, whereas a report only becomes part of a formal record to the extent the FCC incorporates it into a docket.

issue.<sup>13</sup> In this instance, however, despite seeking numerous delays in the date for wireless LNP compliance, the industry never identified the rate center issue in a formal pleading. For example, in its December 16, 1997 Petition for Forbearance, CTIA did not mention the rate center issue, although the wireline/wireless LNP integration process had been underway for some time and the rate center issue had been identified. Perhaps that was too soon. Surely, however, by July 2001, when Verizon Wireless filed its petition for permanent forbearance of the wireless LNP mandate, the wireline/wireless LNP integration process was completed, and the FCC had not yet resolved the rate center issue. At that point, one might have expected Verizon Wireless to flag the issue in its petition. But, it did not, missing the chance to bring the issue to the FCC's attention, just in case the Commission declined to forbear permanently, which turned out to be the case.

The wireless industry's failure to formally present the rate center disparity issue to the FCC earlier than two months after the last deadline of November 2002 and ten months before the next deadline suggests that the issue really is not all that crucial to the success of wireless LNP. The FCC should not further postpone the wireless LNP deadline in order to resolve the rate center issue. If the FCC resolves the issue before November 24, 2003, then any question about meeting the wireless LNP deadline would be moot.

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<sup>13</sup> Since 1996, the wireless industry has made three formal requests for extensions of time to comply with the LNP mandate, and one formal request for permanent forbearance. The instant petition is the first formal filing requesting the FCC to resolve the rate center disparity issue, despite the industry's awareness of the problem as far back as 1997.



## V. CONCLUSION

California urges the FCC to grant the relief CTIA seeks, that is, to resolve the “rate center disparity” issue affecting the porting of wireline customer numbers to wireless carriers. The CPUC adamantly opposes, however, any further delay in the wireless LNP compliance mandate deadline. As California has shown here, wireless LNP implementation can proceed on schedule, with or without resolution of the issue CTIA raises. The CPUC also urges the FCC to resolve the “rate center disparity” issue in favor of consumers and competition by allowing wireline-to-wireless inter-rate center porting of numbers within an area code.

Respectfully submitted,

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